

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2004-339

November 5, 2004

MAINE PUBLIC UTILITIES COMMISSION
Re: Investigation of Central Maine Power
Company's Stranded Cost Revenue Requirement
And Rates

TEMPORARY, AMENDED
PROTECTIVE ORDER NO. 2
(Proprietary Economic Data from
Global Insight and Proprietary
Supply Pricing Information from
Platt's)

Central Maine Power Company ("CMP" or the "Company") has been asked to submit certain information regarding supply price assumptions in response to data requests issued in this proceeding. See, for example, OPA-04-05 ("provide all workpapers and assumptions relied upon to develop the supply prices and delivery prices for electricity") and EX-02-06 ("please explain the Company's assumptions for supply price (amount and timing) for customers taking service from competitive energy providers"). The data the Company intends to provide includes certain proprietary energy pricing data developed by Platt's and made available to CMP through a subscription service. The Company is willing to provide this information provided that Protective Order No. 2, the current protective order issued in this proceeding regarding proprietary data, is amended to include such energy pricing data developed by Platt's.

The materials developed by Global Insight and Platt's and used by CMP are proprietary and have value to their competitors; the release of these materials would be damaging to the interests of the owner of these materials, Global Insight, Platt's, and CMP and its customers. Section 1311-A (1)(A) of Title 35-A of the Maine Revised Statutes grants the Commission the authority to issue protective orders to safeguard the interests of parties in confidential or proprietary information, trade secrets, or similar matters as provided by the Maine Rules of Civil Procedure, Rule 26(c). The Hearing Examiner in Docket No. 2001-232 and in prior and subsequent proceedings has recognized the legitimacy of those concerns. See, e.g., Docket No. 2001-232, Hearing Examiner's Amended Protective Order No. 2, Proprietary Information from DRI and NEEP, in Re: Maine Public Utilities Commission, Investigation of Central Maine Power Company's Stranded Cost Revenue Requirement, and Temporary Protective Order No. 2, Proprietary Economic Data from Global Insight and NEEP in Re: Maine Public Utilities Commission, Investigation of Central Maine Power Company's Stranded Cost Rates and Request for Accounting Order, Docket No. 2002-770. In those cases, the information was released only to certain parties.

CMP agrees to produce such proprietary or confidential information and documents related to the sales forecast and energy pricing on the condition that Protective Order No. 2 is amended to protect data developed by Global Insight and Platt's. Any party at any time can move for a finding that material subject to protection should no longer be protected or that the other party should be provided access to the

protected information pursuant to protective provisions. Unless such a motion is granted, however, use of the allegedly confidential materials continues to be restricted by the terms of Amended Protective Order No. 2.

In order to expedite the provision of this information to the Commission and subject to reconsideration in light of arguments by any intervenors, the Examiners conclude that the limited and revocable protection requested by CMP is warranted under 35-A M.R.S.A. § 1311-A and Rule 26(c) of the Maine Rules of Civil Procedure.

Accordingly, it is

O R D E R E D

That information pertaining to

Proprietary Information from Global Insight and Platt's

1. Shall be considered "Designated Confidential Information" for purposes of this Amended Order and, until this Amended Order is modified, access to Designated Confidential Information shall be limited as described in Paragraph 4 below.
2. That all Designated Confidential Information shall, unless removed from the coverage of this Amended Order as provided in paragraph 3 below, be and remain confidential. Designated Confidential Information shall not be disclosed for any purpose other than the purposes of this proceeding, and then solely in accordance with this Amended Order. No person to whom access to Designated Confidential Information is accorded pursuant to paragraph 4 of this Amended Order shall disclose or reveal, directly or indirectly, the content of the Designated Confidential Information to others, except as provided in paragraph 4.
3. That the parties to whom Designated Confidential Information is furnished may challenge designation of any documents or other information as confidential by motion to the Commission and upon reasonable prior notice to the parties and an opportunity for hearing. Upon the entry of an order granting such a motion, the provisions and restrictions of this Amended Order shall cease to bind any party or other person with respect to the documents or information that the Order granting the motion shall have expressly and clearly removed from the coverage of this Amended Order.
4. That, until this Amended Order is modified, access to Designated Confidential Information shall be limited to (i) Commission members, members of the Commission Staff and their consultants; (ii) the Public Advocate, counsel and their consultants; (iii) a stenographer or reporter recording any hearing in connection with this proceeding; (iv) counsel for or any other representative of CMP; and (v) parties to this proceeding, their counsel, representatives or consultants (not including counsel for or interested parties) provided that they shall agree to use the Designated Confidential Information solely for purposes of this proceeding and not disclose the information to any other person and

provided further, the parties or their attorney do not have "a personal and substantial financial interest that could be benefited by access to the information to the detriment of the party that provided the information." 35-A M.R.S.A. §1311-A(1)(D)(2).

5. That no copies of Designated Confidential Information furnished by CMP shall be circulated to persons other than those persons who are authorized under paragraph 4 of this Amended Order to obtain Designated Confidential Information. Documents offered in evidence may be copied as necessary for that purpose. Persons authorized under paragraph 4 hereof also may take such notes as may be necessary solely for the purposes of this proceeding. Those notes shall also be treated as Designated Confidential Information.

6. All materials claimed by CMP to be Designated Confidential Information under the terms of this Amended Order shall be clearly marked "confidential" by CMP. In the case of documents, each page of any such document shall be stamped "confidential" in bold lettering in the upper right hand corner of each page including the cover letter. Any document or portion thereof not clearly and conspicuously marked "confidential" in bold lettering shall not be protected under the terms of this Amended Order. Faxed materials should be marked as any other confidential document. With regard to other media, diskettes should be marked "confidential" on the outside and each file on the diskette should be similarly identified. Any person or party subject to the terms of this Amended Order who receives unmarked documents or materials which he/she believes CMP intended to be protected by the terms of this Amended Order, and that would have been protected if marked in accordance with this paragraph, shall make a good faith effort to notify CMP of this fact and to avoid use of such documents or materials in a manner inconsistent with protection of such material under this Amended Order.

7. That the restrictions upon, and obligations accruing to, persons who become subject to this Amended Order shall not apply to any Designated Confidential Information submitted in accordance with paragraph 1 of this Amended Order if the Commission rules, after reasonable notice and hearing, that the Designated Confidential Information was publicly known at the time it was furnished or has since become publicly known through no fault of the receiving party.

8. That where reference to Designated Confidential Information is required in pleadings, briefs, other legal documents, or argument, the reference shall be by citation of title or exhibit number only or by some other non-confidential description to the extent possible. In those circumstances, counsel shall make every reasonable effort to preserve the confidentiality of material in the sealed record. If counsel shall include Designated Confidential Information in pleadings, briefs, other legal documents, or arguments, that portion of the documents or that portion of the transcript of the argument containing Designated Confidential Information shall be maintained under seal.

9. That the Commission may draw upon all Designated Confidential Information in the record in the deliberation of any decision or order that it may issue, but the Commission will avoid the reproduction in its decision of any Designated Confidential Information.

10. That should any appeal of, or other challenge to, the Commission's decision in this proceeding be taken, any portions of the record that have been sealed in accordance with paragraph 7 above shall be forwarded to the courts of this State in accordance with applicable law and procedures, but under seal and so designated in writing for the information of the court.

11. That this Amended Order does not preclude any party from (a) objecting under the Maine Rules of Evidence to the admissibility of any Designated Confidential Information produced by Central Maine Power Company or (b) objecting, on any substantive or procedural ground, to any subsequent data request or other request for information.

12. That CMP may, at its option, provide to each person having access to Designated Confidential Information a copy of this Amended Order and require each person to agree in writing to the terms hereof prior to obtaining access to the Designated Confidential Information.

13. That Designated Confidential Information made available pursuant to this Amended Order and made part of the record in any proceeding before the Commission shall remain in the possession of the Commission, under seal, and subject to the protective requirements of this Amended Order, until this Commission or its authorized presiding officer shall otherwise order.

14. That this Amended Order may be modified on motion of any party or on the Commission's own motion upon reasonable prior notice to the parties and an opportunity for hearing.

15. Copies of Designated Confidential Information and documents, notes and other materials containing or reflecting, directly or indirectly, the Designated Confidential Information, that are in the possession of Commission members, counsel or employees of the Commission may be retained by those persons for the purpose of performing those persons' duties and obligations. If retained, the Designated Confidential Information shall be subject to this Amended Protective Order or to a protective order issued in another proceeding in which the Designated Confidential Information is used. If a Commission member, counsel or employee of the Commission does not retain the Designated Confidential Information, that person shall destroy it as provided in this paragraph. Within 40 days after the Commission reaches a final decision (i.e., unappealable) in this proceeding, each other party and Commission independent consultants and experts retained by the Commission to whom Designated Confidential

Information has been made available shall destroy all documents, notes and other materials containing or reflecting, directly or indirectly, the Designated Confidential Information. Audio, video or other such magnetically recorded materials shall be electronically erased before disposal. Documents shall be shredded.

Dated at Augusta, Maine, this 5th day of November, 2004.

BY ORDER OF THE HEARING EXAMINER

Charles Cohen